

**Executive Summary – Enforcement Matter – Case No. 41793**  
**U.S. Army Corps of Engineers**  
**RN101715340**  
**Docket No. 2011-0908-MWD-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

MWD

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Jim Hogg Park North Fork, located at 500 Jim Hogg Road, in Jim Hogg Park, adjacent to the northeast side of Lake Georgetown, approximately 4.5 miles northwest of the intersection of Interstate Highway 35 and Farm-to-Market Road 2338, on the southwestern end of Park Road Number 5, Williamson County

**Type of Operation:**

Wastewater treatment facility

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** October 14, 2011

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$14,700

**Amount Deferred for Expedited Settlement:** \$2,940

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$11,760

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 41793**  
**U.S. Army Corps of Engineers**  
**RN101715340**  
**Docket No. 2011-0908-MWD-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** May 18, 2011

**Date(s) of NOE(s):** May 18, 2011

***Violation Information***

1. Failed to comply with permit effluent limits for five-day biochemical oxygen demand [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TCEQ Permit No. WQ0012255002, Effluent Limitations and Monitoring Requirements Part A. Effluent Limitations].
2. Failed to submit a noncompliance notification report for any effluent violation which deviates from the permitted effluent limitation by more than 40 percent. Specifically, single grab five-day biochemical oxygen demand concentrations exceeded the permitted effluent limit by 74% or more in March 2010 through August 2010, November 2010, December 2010, January 2011, and February 2011; however, noncompliance notification reports were not submitted to the TCEQ [30 TEX. ADMIN. CODE § 305.125(1) and TCEQ Permit No. WQ0012255002, Monitoring Requirements No. 7.c.].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require the Respondent to:

- a. Within 30 days, update the Facility's operational guidance and conduct employee training to ensure that noncompliance reports are submitted;
- b. Within 45 days, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.;
- c. Within 180 days, submit written certification of compliance with the effluent limits of TCEQ Permit No. WQ0012255002, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.

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***Litigation Information***

**Date Petition(s) Filed:** N/A  
**Date Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A  
**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A  
**TCEQ Enforcement Coordinator:** Merrilee Hupp, Enforcement Division,  
Enforcement Team 1, MC 169, (512) 239-4490; Debra Barber, Enforcement Division,  
MC 219, (512) 239-0412  
**TCEQ SEP Coordinator:** N/A  
**Respondent:** Ronald E. Miller, Operations Project Manager, U.S. Army Corps of  
Engineers, 500 Lake Overlook Drive, Georgetown, Texas 78633  
Carey Weber, Lake Manager, U.S. Army Corps of Engineers, 500 Lake Overlook Drive,  
Georgetown, Texas 78633  
**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	23-May-2011	<b>Screening</b>	8-Jun-2011	<b>EPA Due</b>	
	<b>PCW</b>	8-Jun-2011				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	U.S. Army Corps of Engineers		
<b>Reg. Ent. Ref. No.</b>	RN101715340		
<b>Facility/Site Region</b>	11-Austin	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	41793	<b>No. of Violations</b>	2
<b>Docket No.</b>	2011-0908-MWD-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Merrilee Hupp
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$14,000
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$700
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Notes: Enhancement for one NOV with same/similar violations.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$506  
Approx. Cost of Compliance \$2,315  
\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$14,700
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$14,700
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$14,700
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$2,940
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$11,760
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Screening Date 8-Jun-2011

Docket No. 2011-0908-MWD-E

PCW

Respondent U.S. Army Corps of Engineers

Policy Revision 2 (September 2002)

Case ID No. 41793

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101715340

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one NOV with same/similar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 5%

Screening Date 8-Jun-2011

Docket No. 2011-0908-MWD-E

PCW

Respondent U.S. Army Corps of Engineers

Policy Revision 2 (September 2002)

Case ID No. 41793

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101715340

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a)(1), and 30 Tex. Admin. Code § 305.125(1), and Texas Commission on Environmental Quality ("TCEQ") Permit No. WQ0012255002, Effluent Limitations and Monitoring Requirements Part A. Effluent Limitations

Violation Description Failed to comply with permit effluent limits, as documented during an investigation conducted on March 18, 2011 and shown in the attached effluent violation table.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 4

305 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$4,000

Four quarterly events are recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$4,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$242

Violation Final Penalty Total \$4,200

This violation Final Assessed Penalty (adjusted for limits) \$4,200

# Economic Benefit Worksheet

**Respondent** U.S. Army Corps of Engineers  
**Case ID No.** 41793  
**Req. Ent. Reference No.** RN101715340  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$1,500	31-Mar-2010	31-Mar-2012	2.00	\$10	\$200	\$210
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$315	31-Mar-2010	31-Mar-2012	2.00	\$32	n/a	\$32
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Actual cost (\$315) for increased sampling (\$45 per sample for seven additional samples) to determine the source of the five-day biochemical oxygen demand excursions and the estimated cost for securing or additional monitoring of the dump station to prevent unauthorized use and contributions which would exceed the wastewater treatment capabilities of the Facility. Date required is the first noncompliant month and the final date is the expected date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,815

**TOTAL**

\$242



Screening Date 8-Jun-2011

Docket No. 2011-0908-MWD-E

PCW

Respondent U.S. Army Corps of Engineers

Policy Revision 2 (September 2002)

Case ID No. 41793

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101715340

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 305.125(1) and TCEQ Permit No. WQ0012255002 Monitoring Requirements No. 7.c.

Violation Description

Failed to submit a noncompliance notification report for any effluent violation which deviates from the permitted effluent limitation by more than 40 percent. Specifically, single grab five-day biochemical oxygen demand concentrations exceeded the permitted effluent limit by 74% or more in March 2010 through August 2010, November 2010, December 2010, January 2011, and February 2011; however, noncompliance notification reports were not submitted to the TCEQ.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

	Major	Moderate	Minor
Falsification			
	x		

Percent 10%

Matrix Notes

100% of the requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 10

427

Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$10,000

Ten single events are recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$10,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$264

Violation Final Penalty Total \$10,500

This violation Final Assessed Penalty (adjusted for limits) \$10,500

# Economic Benefit Worksheet

**Respondent** U.S. Army Corps of Engineers  
**Case ID No.** 41793  
**Req. Ent. Reference No.** RN101715340  
**Media** Water Quality  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$250	7-Apr-2010	29-Feb-2012	1.90	\$24	n/a	\$24
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost for updating the Facility's operational guidance and to conduct training to ensure the submittal of noncompliance reports as required by the permit. Date required is the date the first noncompliance report was due and the final date is the expected date of compliance.

## Avoided Costs

### ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling	\$250	7-Apr-2010	7-Mar-2011	0.92	\$11	\$229	\$240
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to submit noncompliance notifications (\$25 per report). Date required is the date the first report was due. Final date is the date the last report was due.

Approx. Cost of Compliance \$500

**TOTAL** \$264

Respondent: U.S. Army Corps of Engineers  
TCEQ Permit No. WQ0012255002  
Docket No. 2011-0908-MWD-E

Effluent Violation Table

<i><b>Monitoring Period End Date</b></i>	<i><b>Single Grab Biochemical Oxygen Demand (5-day) Concentration</b></i>
	Permit Limit = 100 mg/L
	Reported Value (mg/L)
March 2010	426
April 2010	515
May 2010	297
June 2010	512
July 2010	423
August 2010	417
November 2010	211
December 2010	268
January 2011	554
February 2011	174

mg/L: milligrams per liter



## Compliance History

Customer/Respondent/Owner-Operator:	CN600918916	US Army Corps of Engineers	Classification: AVERAGE	Rating: 2.52
Regulated Entity:	RN101715340	JIM HOGG PARK NORTH FORK	Classification: AVERAGE	Site Rating: 1.00
ID Number(s):	WASTEWATER WASTEWATER LICENSING	PERMIT LICENSE	WQ0012255002 WQ0012255002	
Location:	500 Jim Hogg Road, in Jim Hogg Park located adj. To NE side of Lake Georgetown Approx. 4.5 mi. NW of intersec. of IH 35 and FM 2338, on SW end of Park Road No. 5, Williamson Co., Texas			
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	June 08, 2011			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 08, 2006 to June 08, 2011			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Merrilee Hupp Phone: (512) 239 - 4490

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2010 Repeat Violator: NO

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 

1	01/25/2007	(513800)
2	04/18/2007	(556606)
3	05/18/2011	(914207)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

Date:	01/29/2007 (513800)	CN600918916
Self	NO	Classificatio Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)	
Description:	The BOD (five-day) permit limit of 100mg/L was exceeded for every month in 2005 and all months in 2006 with the exception of June and July. The BOD (five-day) permit limit of 100mg/L was exceeded for every month in 2005 and all months in 2006 with the exception of June and July. The BOD (five-day) permit limit of 100	
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
U.S. ARMY CORPS OF  
ENGINEERS  
RN101715340**

**§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§  
§ ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2011-0908-MWD-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the U.S. Army Corps of Engineers ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a wastewater treatment facility located at 500 Jim Hogg Road, in Jim Hogg Park, adjacent to the northeast side of Lake Georgetown, approximately 4.5 miles northwest of the intersection of Interstate Highway 35 and Farm-to-Market Road 2338, on the southwestern end of Park Road Number 5 in Williamson County, Texas (the "Facility").
2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 23, 2011.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Fourteen Thousand Seven Hundred Dollars (\$14,700) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Eleven Thousand Seven Hundred Sixty Dollars (\$11,760) of the administrative penalty and Two Thousand Nine Hundred Forty Dollars (\$2,940) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to comply with permit effluent limits, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TCEQ Permit No. WQ0012255002, Effluent Limitations and Monitoring Requirements Part A. Effluent Limitations, as documented during an investigation conducted on March 18, 2011, and shown in the table below:



<i><b>Monitoring Period End Date</b></i>	<i><b>Single Grab Biochemical Oxygen Demand (5- day) Concentration</b></i>
	Permit Limit = 100 mg/L
	Reported Value (mg/L)
March 2010	426
April 2010	515
May 2010	297
June 2010	512
July 2010	423
August 2010	417
November 2010	211
December 2010	268
January 2011	554
February 2011	174

mg/L: milligrams per liter

2. Failed to submit a noncompliance notification report for any effluent violation which deviates from the permitted effluent limitation by more than 40 percent, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TCEQ Permit No. WQ0012255002, Monitoring Requirements No. 7.c, as documented during an investigation conducted on May 18, 2011. Specifically, single grab five-day biochemical oxygen demand concentrations exceeded the permitted effluent limit by 74% or more in March 2010 through August 2010, November 2010, December 2010, January 2011, and February 2011; however, noncompliance notification reports were not submitted to the TCEQ.

### **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: U.S. Army Corps of Engineers, Docket No. 2011-0908-MWD-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
- a. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that noncompliance reports are submitted in accordance with TCEQ Permit No. WQ0012255002, Monitoring Requirements No. 7;
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be submitted in accordance with Ordering Provision No. 2.d below;
  - c. Within 180 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TCEQ Permit No. WQ0012255002, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall be in accordance with Ordering Provision No. 2.d below.
  - d. The certification required by Ordering Provision Nos. 2.b and 2.c shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager  
Austin Regional Office  
Texas Commission on Environmental Quality  
2800 S IH 35, Suite 100  
Austin, Texas 78704-5712

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*D. Wade* For *R. Hyde*  
For the Executive Director

10-26-11  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

*Ronald E. Miller*  
Signature

12 SEPT 2011  
Date

RONALD E. MILLER  
Name (Printed or typed)  
Authorized Representative of  
U.S. Army Corps of Engineers

OPERATIONS PROJECT MGR.  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.